

MICHIGAN LIQUOR CONTROL CODE OF 1998 (EXCERPT)
Act 58 of 1998

436.1701 Selling or furnishing alcoholic liquor to person less than 21 years of age; failure to make diligent inquiry; misdemeanor; signs; consumption of alcoholic liquor as cause of death or injury; felony; enforcement against licensee; consent of parent or guardian in undercover operation; defense in action for violation; report; definitions.

Sec. 701. (1) Alcoholic liquor shall not be sold or furnished to a minor. Except as otherwise provided in subsection (2) and subject to subsections (4), (5), and (6), a person who knowingly sells or furnishes alcoholic liquor to a minor, or who fails to make diligent inquiry as to whether the person is a minor, is guilty of a misdemeanor. A retail licensee or a retail licensee's clerk, agent, or employee who violates this subsection shall be punished in the manner provided for licensees in section 909 except that if the violation is the result of an undercover operation in which the minor received alcoholic liquor under the direction of the state police, the commission, or a local police agency as part of an enforcement action, the retail licensee's clerk, agent, or employee is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$100.00. Except as otherwise provided in subsection (2), a person who is not a retail licensee or a retail licensee's clerk, agent, or employee and who violates this subsection is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00 and imprisonment for not more than 60 days for a first offense, a fine of not more than \$2,500.00 and imprisonment for not more than 90 days for a second or subsequent offense, and may be ordered to perform community service. A suitable sign describing the content of this section and the penalties for its violation shall be posted in a conspicuous place in each room where alcoholic liquor is sold. The signs shall be approved and furnished by the commission.

(2) A person who is not a retail licensee or the retail licensee's clerk, agent, or employee and who violates subsection (1) is guilty of a felony, punishable by imprisonment for not more than 10 years or a fine of not more than \$5,000.00, or both, if the subsequent consumption of the alcoholic liquor by the minor is a direct and substantial cause of that person's death or an accidental injury that causes that person's death.

(3) If a violation occurs in an establishment that is licensed by the commission for consumption of alcoholic liquor on the licensed premises, a person who is a licensee or the clerk, agent, or employee of a licensee shall not be charged with a violation of subsection (1) or section 801(2) unless the licensee or the clerk, agent, or employee of the licensee knew or should have reasonably known with the exercise of due diligence that a person less than 21 years of age possessed or consumed alcoholic liquor on the licensed premises and the licensee or clerk, agent, or employee of the licensee failed to take immediate corrective action.

(4) If the enforcing agency involved in the violation is the state police or a local police agency, a licensee shall not be charged with a violation of subsection (1) or section 801(2) unless all of the following occur, if applicable:

(a) Enforcement action is taken against the minor who purchased or attempted to purchase, consumed or attempted to consume, or possessed or attempted to possess alcoholic liquor.

(b) Enforcement action is taken under this section against the person 21 years of age or older who is not the retail licensee or the retail licensee's clerk, agent, or employee who sold or furnished the alcoholic liquor to the minor.

(c) Enforcement action under this section is taken against the clerk, agent, or employee who directly sold or furnished alcoholic liquor to the minor.

(5) If the enforcing agency is the commission and an appearance ticket or civil infraction citation has not been issued, then the commission shall recommend to a local law enforcement agency that enforcement action be taken against a violator of this section or section 703 who is not a licensee. However, subsection (4) does not apply if the minor against whom enforcement action is taken under section 703, the clerk, agent, or employee of the licensee who directly sold or furnished alcoholic liquor to the minor, or the person 21 years of age or older who sold or furnished alcoholic liquor to the minor is not alive or is not present in this state at the time the licensee is charged. Subsection (4)(a) does not apply under either of the following circumstances:

(a) The violation of subsection (1) is the result of an undercover operation in which the minor purchased or received alcoholic liquor under the direction of the person's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.

(b) The violation of subsection (1) is the result of an undercover operation in which the minor purchased or received alcoholic liquor under the direction of the state police, the commission, or a local police agency as part of an enforcement action.

(6) Any initial or contemporaneous purchase or receipt of alcoholic liquor by the minor under subsection (5)(a) or (b) must have been under the direction of the state police, the commission, or the local police agency

and must have been part of the undercover operation.

(7) If a minor participates in an undercover operation in which the minor is to purchase or receive alcoholic liquor under the supervision of a law enforcement agency, his or her parents or legal guardian shall consent to the participation if that person is less than 18 years of age.

(8) In an action for the violation of this section, proof that the defendant or the defendant's agent or employee demanded and was shown, before furnishing alcoholic liquor to a minor, a motor vehicle operator's or chauffeur's license, a military identification card, or other bona fide documentary evidence of the age and identity of that person, shall be a defense to an action brought under this section.

(9) The commission shall provide, on an annual basis, a written report to the department of state police as to the number of actions heard by the commission involving violations of this section and section 801(2). The report shall include the disposition of each action and contain figures representing the following categories:

- (a) Decoy operations.
- (b) Off-premises violations.
- (c) On-premises violations.
- (d) Repeat offenses within the 3 years preceding the date of that report.
- (10) As used in this section:

(a) "Corrective action" means action taken by a licensee or a clerk, agent, or employee of a licensee designed to prevent a minor from further possessing or consuming alcoholic liquor on the licensed premises. Corrective action includes, but is not limited to, contacting a law enforcement agency and ejecting the minor and any other person suspected of aiding and abetting the minor.

(b) "Diligent inquiry" means a diligent good faith effort to determine the age of a person, which includes at least an examination of an official Michigan operator's or chauffeur's license, an official Michigan personal identification card, a military identification card, or any other bona fide picture identification which establishes the identity and age of the person.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998;—Am. 2002, Act 725, Imd. Eff. Dec. 30, 2002;—Am. 2006, Act 682, Imd. Eff. Jan. 10, 2007.

MICHIGAN LIQUOR CONTROL CODE OF 1998 (EXCERPT)

Act 58 of 1998

436.1703 Purchase, consumption, or possession of alcoholic liquor by minor; attempt; violation; fines; sanctions; furnishing fraudulent identification to minor; screening and assessment; chemical breath analysis; notice to parent, custodian, or guardian; construction of section; exceptions; "any bodily alcohol content" defined.

Sec. 703. (1) A minor shall not purchase or attempt to purchase alcoholic liquor, consume or attempt to consume alcoholic liquor, possess or attempt to possess alcoholic liquor, or have any bodily alcohol content, except as provided in this section. A minor who violates this subsection is guilty of a misdemeanor punishable by the following fines and sanctions and is not subject to the penalties prescribed in section 909:

(a) For the first violation a fine of not more than \$100.00, and may be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in section 6107 of the public health code, 1978 PA 368, MCL 333.6107, and designated by the administrator of substance abuse services, and may be ordered to perform community service and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (4).

(b) For a violation of this subsection following a prior conviction or juvenile adjudication for a violation of this subsection, section 33b(1) of former 1933 (Ex Sess) PA 8, or a local ordinance substantially corresponding to this subsection or section 33b(1) of former 1933 (Ex Sess) PA 8, by imprisonment for not more than 30 days but only if the minor has been found by the court to have violated an order of probation, failed to successfully complete any treatment, screening, or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication, a fine of not more than \$200.00, or both, and may be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in section 6107 of the public health code, 1978 PA 368, MCL 333.6107, and designated by the administrator of substance abuse services, to perform community service, and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (4).

(c) For a violation of this subsection following 2 or more prior convictions or juvenile adjudications for a violation of this subsection, section 33b(1) of former 1933 (Ex Sess) PA 8, or a local ordinance substantially corresponding to this subsection or section 33b(1) of former 1933 (Ex Sess) PA 8, by imprisonment for not more than 60 days but only if the minor has been found by the court to have violated an order of probation, failed to successfully complete any treatment, screening, or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication, a fine of not more than \$500.00, or both, and may

be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in section 6107 of the public health code, 1978 PA 368, MCL 333.6107, and designated by the administrator of substance abuse services, to perform community service, and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (4).

(2) A person who furnishes fraudulent identification to a minor, or notwithstanding subsection (1) a minor who uses fraudulent identification to purchase alcoholic liquor, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both.

(3) When an individual who has not previously been convicted of or received a juvenile adjudication for a violation of subsection (1) pleads guilty to a violation of subsection (1) or offers a plea of admission in a juvenile delinquency proceeding for a violation of subsection (1), the court, without entering a judgment of guilt in a criminal proceeding or a determination in a juvenile delinquency proceeding that the juvenile has committed the offense and with the consent of the accused, may defer further proceedings and place the individual on probation upon terms and conditions that include, but are not limited to, the sanctions set forth in subsection (1)(a), payment of the costs including minimum state cost as provided for in section 18m of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18m, and section 1j of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1j, and the costs of probation as prescribed in section 3 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.3. Upon violation of a term or condition of probation or upon a finding that the individual is utilizing this subsection in another court, the court may enter an adjudication of guilt, or a determination in a juvenile delinquency proceeding that the individual has committed the offense, and proceed as otherwise provided by law. Upon fulfillment of the terms and conditions of probation, the court shall discharge the individual and dismiss the proceedings. Discharge and dismissal under this section shall be without adjudication of guilt or without a determination in a juvenile delinquency proceeding that the individual has committed the offense and is not a conviction or juvenile adjudication for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions or juvenile adjudications under subsection (1)(b) and (c). There may be only 1 discharge and dismissal under this subsection as to an individual. The court shall maintain a nonpublic record of the matter while proceedings are deferred and the individual is on probation and if there is a discharge and dismissal under this subsection. The secretary of state shall retain a nonpublic record of a plea and of the discharge and dismissal under this subsection. These records shall be furnished to any of the following:

(a) To a court, prosecutor, or police agency upon request for the purpose of determining if an individual has already utilized this subsection.

(b) To the department of corrections, a prosecutor, or a law enforcement agency, upon the department's, a prosecutor's, or a law enforcement agency's request, subject to all of the following conditions:

(i) At the time of the request, the individual is an employee of the department of corrections, the prosecutor, or the law enforcement agency, or an applicant for employment with the department of corrections, the prosecutor, or the law enforcement agency.

(ii) The record is used by the department of corrections, the prosecutor, or the law enforcement agency only to determine whether an employee has violated his or her conditions of employment or whether an applicant meets criteria for employment.

(4) The court may order the person convicted of violating subsection (1) to undergo screening and assessment by a person or agency as designated by the substance abuse coordinating agency as defined in section 6103 of the public health code, 1978 PA 368, MCL 333.6103, in order to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. The court may order a person subject to a conviction or juvenile adjudication of, or placed on probation regarding, a violation of subsection (1) to submit to a random or regular preliminary chemical breath analysis. In the case of a minor under 18 years of age not emancipated under 1968 PA 293, MCL 722.1 to 722.6, the parent, guardian, or custodian may request a random or regular preliminary chemical breath analysis as part of the probation.

(5) The secretary of state shall suspend the operator's or chauffeur's license of an individual convicted of violating subsection (1) or (2) as provided in section 319 of the Michigan vehicle code, 1949 PA 300, MCL 257.319.

(6) A peace officer who has reasonable cause to believe a minor has consumed alcoholic liquor or has any bodily alcohol content may require the person to submit to a preliminary chemical breath analysis. A peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis. The results of a preliminary chemical breath analysis or other acceptable blood alcohol test are admissible in a criminal prosecution to determine whether the minor has consumed or possessed alcoholic liquor or had any bodily alcohol content. A minor who refuses to submit to a preliminary chemical breath test

analysis as required in this subsection is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$100.00.

(7) A law enforcement agency, upon determining that a person less than 18 years of age who is not emancipated under 1968 PA 293, MCL 722.1 to 722.6, allegedly consumed, possessed, purchased alcoholic liquor, attempted to consume, possess, or purchase alcoholic liquor, or had any bodily alcohol content in violation of subsection (1) shall notify the parent or parents, custodian, or guardian of the person as to the nature of the violation if the name of a parent, guardian, or custodian is reasonably ascertainable by the law enforcement agency. The notice required by this subsection shall be made not later than 48 hours after the law enforcement agency determines that the person who allegedly violated subsection (1) is less than 18 years of age and not emancipated under 1968 PA 293, MCL 722.1 to 722.6. The notice may be made by any means reasonably calculated to give prompt actual notice including, but not limited to, notice in person, by telephone, or by first-class mail. If an individual less than 17 years of age is incarcerated for violating subsection (1), his or her parents or legal guardian shall be notified immediately as provided in this subsection.

(8) This section does not prohibit a minor from possessing alcoholic liquor during regular working hours and in the course of his or her employment if employed by a person licensed by this act, by the commission, or by an agent of the commission, if the alcoholic liquor is not possessed for his or her personal consumption.

(9) This section does not limit the civil or criminal liability of the vendor or the vendor's clerk, servant, agent, or employee for a violation of this act.

(10) The consumption of alcoholic liquor by a minor who is enrolled in a course offered by an accredited postsecondary educational institution in an academic building of the institution under the supervision of a faculty member is not prohibited by this act if the purpose of the consumption is solely educational and is a requirement of the course.

(11) The consumption by a minor of sacramental wine in connection with religious services at a church, synagogue, or temple is not prohibited by this act.

(12) Subsection (1) does not apply to a minor who participates in either or both of the following:

(a) An undercover operation in which the minor purchases or receives alcoholic liquor under the direction of the person's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.

(b) An undercover operation in which the minor purchases or receives alcoholic liquor under the direction of the state police, the commission, or a local police agency as part of an enforcement action unless the initial or contemporaneous purchase or receipt of alcoholic liquor by the minor was not under the direction of the state police, the commission, or the local police agency and was not part of the undercover operation.

(13) The state police, the commission, or a local police agency shall not recruit or attempt to recruit a minor for participation in an undercover operation at the scene of a violation of subsection (1), section 801(2), or section 701(1).

(14) In a criminal prosecution for the violation of subsection (1) concerning a minor having any bodily alcohol content, it is an affirmative defense that the minor consumed the alcoholic liquor in a venue or location where that consumption is legal.

(15) As used in this section, "any bodily alcohol content" means either of the following:

(a) An alcohol content of 0.02 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(b) Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998;—Am. 1998, Act 353, Eff. Oct. 1, 1999;—Am. 1999, Act 53, Eff. Oct. 1, 1999;—Am. 2004, Act 63, Eff. Sept. 1, 2004;—Am. 2006, Act 443, Imd. Eff. Nov. 27, 2006.

MICHIGAN LIQUOR CONTROL CODE OF 1998 (EXCERPT)

Act 58 of 1998

436.1705 Power of peace officer or law enforcement officer witnessing violation to stop and detain person; issuance of appearance ticket.

Sec. 705. A peace officer or law enforcement officer described under section 201 or an inspector of the commission who witnesses a violation of section 701(1) or 703, or a local ordinance corresponding to section 701(1) or 703, may stop and detain a person and obtain satisfactory identification, seize illegally possessed alcoholic liquor, and issue an appearance ticket as prescribed in section 9c of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.9c.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998;—Am. 2002, Act 725, Imd. Eff. Dec. 30, 2002.

MICHIGAN LIQUOR CONTROL CODE OF 1998 (EXCERPT)
Act 58 of 1998

436.1707 Sales to intoxicated persons prohibited.

Sec. 707. A vendor shall not sell any alcoholic liquor to any person in an intoxicated condition.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

MICHIGAN LIQUOR CONTROL CODE OF 1998 (EXCERPT)
Act 58 of 1998

436.1801 Granting or renewal of license; surety; selling, furnishing, or giving alcoholic liquor to minor or to person visibly intoxicated; right of action for damage or personal injury; actual damages; institution of action; notice; survival of action; general reputation as evidence of relation; separate actions by parents; commencement of action against retail licensee; indemnification; defenses available to licensee; rebuttable presumption; prohibited causes of action; section as exclusive remedy for money damages against licensee; civil action subject to revised judicature act.

Sec. 801. (1) Except as otherwise provided in this act, before the approval and granting, or renewal, of a license, the following licensees or applicants for that license shall make, execute, and deliver to the commission a bond executed by a surety company authorized to do business in the state or, in the discretion of the commission, by approved personal surety running to the people of the state, in the following amounts:

(a) A manufacturer of beer, a manufacturer of wine, a mixed spirit drink manufacturer, an outstate seller of beer, an outstate seller of mixed spirit drink, and an outstate seller of wine, a bond in an amount equal to 1/12 of the total beer, mixed spirit drink, or wine excise taxes paid to the state in the last calendar year or a bond in the sum of \$1,000.00, whichever is greater, for the faithful performance of the conditions of the license issued and for compliance with this act. A surety shall not cancel a bond issued under this subdivision except upon 30 days' written notice to the commission.

(b) A special license authorizing the sale of beer, mixed spirit drink, wine, or spirits for consumption on the premises, a bond in the sum of \$1,000.00. A bond issued under this subdivision shall remain in effect for 60 days after the expiration of the special license. A bond is not required for a church or school.

(2) A retail licensee shall not directly, individually, or by a clerk, agent, or servant sell, furnish, or give alcoholic liquor to a minor except as otherwise provided in this act. A retail licensee shall not directly or indirectly, individually or by a clerk, agent, or servant sell, furnish, or give alcoholic liquor to a person who is visibly intoxicated.

(3) Except as otherwise provided in this section, an individual who suffers damage or who is personally injured by a minor or visibly intoxicated person by reason of the unlawful selling, giving, or furnishing of alcoholic liquor to the minor or visibly intoxicated person, if the unlawful sale is proven to be a proximate cause of the damage, injury, or death, or the spouse, child, parent, or guardian of that individual, shall have a right of action in his or her name against the person who by selling, giving, or furnishing the alcoholic liquor has caused or contributed to the intoxication of the person or who has caused or contributed to the damage, injury, or death. In an action pursuant to this section, the plaintiff shall have the right to recover actual damages in a sum of not less than \$50.00 in each case in which the court or jury determines that intoxication was a proximate cause of the damage, injury, or death.

(4) An action under this section shall be instituted within 2 years after the injury or death. A plaintiff seeking damages under this section shall give written notice to all defendants within 120 days after entering an attorney-client relationship for the purpose of pursuing a claim under this section. Failure to give written notice within the time specified shall be grounds for dismissal of a claim as to any defendants that did not receive that notice unless sufficient information for determining that a retail licensee might be liable under this section was not known and could not reasonably have been known within the 120 days. In the event of the death of either party, the right of action under this section shall survive to or against his or her personal representative. In each action by a husband, wife, child, or parent, the general reputation of the relation of husband and wife or parent and child shall be prima facie evidence of the relation, and the amount recovered by either the husband, wife, parent, or child shall be his or her sole and separate property. The damages, together with the costs of the action, shall be recovered in an action under this section. If the parents of the individual who suffered damage or who was personally injured are entitled to damages under this section, the father and mother may sue separately, but recovery by 1 is a bar to action by the other.

(5) An action under this section against a retail licensee shall not be commenced unless the minor or the alleged intoxicated person is a named defendant in the action and is retained in the action until the litigation is concluded by trial or settlement.

(6) Any licensee subject to the provisions of subsection (3) regarding the unlawful selling, furnishing, or giving of alcoholic liquor to a visibly intoxicated person shall have the right to full indemnification from the alleged visibly intoxicated person for all damages awarded against the licensee.

(7) All defenses of the alleged visibly intoxicated person or the minor shall be available to the licensee. In an action alleging the unlawful sale of alcoholic liquor to a minor, proof that the defendant retail licensee or the defendant's agent or employee demanded and was shown a Michigan driver license or official state personal identification card, appearing to be genuine and showing that the minor was at least 21 years of age, shall be a defense to the action.

(8) There shall be a rebuttable presumption that a retail licensee, other than the retail licensee who last sold, gave, or furnished alcoholic liquor to the minor or the visibly intoxicated person, has not committed any act giving rise to a cause of action under subsection (3).

(9) The alleged visibly intoxicated person shall not have a cause of action pursuant to this section and a person shall not have a cause of action pursuant to this section for the loss of financial support, services, gifts, parental training, guidance, love, society, or companionship of the alleged visibly intoxicated person.

(10) This section provides the exclusive remedy for money damages against a licensee arising out of the selling, giving, or furnishing of alcoholic liquor.

(11) Except as otherwise provided for under this section and section 815, a civil action under subsection (3) against a retail licensee shall be subject to the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

Compiler's note: Former sections 22 to 22h of Act 8 of 1933 (Ex. Sess.), being MCL 436.22 to 436.22h, and which were repealed by Act 58 of 1998, Eff. Apr. 14, 1998, were formerly known and cited as the "Dram Shop Act."

Popular name: Dram Shop Act

MICHIGAN LIQUOR CONTROL CODE OF 1998 (EXCERPT)

Act 58 of 1998

436.1903 Suspension or revocation of license; violation of act or rules; penalty; disposition; hearing; procedure; fee; right of appeal; institution of criminal prosecutions; defense; rules; appointment of agents to hear violation cases; authority and responsibility; ineligibility of designated agent for appointment to commission.

Sec. 903. (1) The commission or any commissioner or duly authorized agent of the commission designated by the chairperson of the commission, upon due notice and proper hearing, may suspend or revoke any license upon a violation of this act or any of the rules promulgated by the commission under this act. The commission or any commissioner or duly authorized agent of the commission designated by the chairperson of the commission, may assess a penalty of not more than \$300.00 for each violation of this act or rules promulgated under this act, or not more than \$1,000.00 for each violation of section 801(2), in addition to or in lieu of revocation or suspension of the license, which penalty shall be paid to the commission and deposited with the state treasurer and shall be credited to the general fund of the state. The commission shall hold a hearing and order the suspension or revocation of a license if the licensee has been found liable for 3 or more separate violations of section 801(2) which violations occurred on different occasions within a 24-month period unless such violations for the sale, furnishing, or giving alcoholic liquor to a minor were discovered by the licensee and disclosed to an appropriate law enforcement agency immediately upon discovery.

(2) The commission shall provide a procedure by which a licensee who is aggrieved by any penalty imposed under subsection (1) and any suspension or revocation of a license ordered by the commission, a commissioner, or a duly authorized agent of the commission may request a hearing for the purpose of presenting any facts or reasons to the commission as to why the penalty, suspension, or revocation should be modified or rescinded. Any such request shall be in writing and accompanied by a fee of \$25.00. The commission, after reviewing the record made before a commissioner or a duly authorized agent of the commission, may allow or refuse to allow the hearing in accordance with the commission's rules. The right to a hearing provided in this subsection, however, shall not be interpreted by any court as curtailing, removing, or annulling the right of the commission to suspend or revoke licenses as provided for in this act. A licensee does not have a right of appeal from the final determination of the commission, except by leave of the circuit court. Notice of the order of suspension or revocation of a license or of the assessment of a penalty, or both, shall be given in the manner prescribed by the commission. The suspension or revocation of a license or the assessment of a penalty, or both, by the commission or a duly authorized agent of the commission does not prohibit the institution of a criminal prosecution for a violation of this act. The institution of a criminal prosecution for a violation of this act or the acquittal or conviction of a person for a violation of this act does not prevent the suspension or revocation of a license or the assessment of a penalty, or both, by the

commission. In a hearing for the suspension or revocation of a license issued under this act, proof that the defendant licensee or an agent or employee of the licensee demanded and was shown, before furnishing any alcoholic liquor to a minor, a motor vehicle operator or chauffeur license or a registration certificate issued by the federal selective service, or other bona fide documentary evidence of majority and identity of the person, may be offered as evidence in a defense to a proceeding for the suspension or revocation of a license issued under this act. A licensee who has reason to believe that a minor has used fraudulent identification to purchase alcoholic liquor in violation of section 703 shall file a police report concerning the violation with a local law enforcement agency and shall also present the alleged fraudulent identification to the local law enforcement agency at the time of filing the report if the identification is in the possession of the licensee. The commission may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, regarding the utilization by licensees of equipment designed to detect altered or forged driver licenses, state identification cards, and other forms of identification.

(3) In addition to the hearing commissioners provided for in section 209, the chairperson of the commission may designate not more than 2 duly authorized agents to hear violation cases. A person appointed under this subsection shall be a member in good standing of the state bar of Michigan.

(4) A duly authorized agent who has been designated by the chairperson pursuant to subsection (3) shall have, in the hearing of violation cases, the same authority and responsibility as does a hearing commissioner under this act and the rules promulgated under this act.

(5) A duly authorized agent who has been designated by the chairperson pursuant to subsection (3) shall be ineligible for appointment to the commission for a period of 1 year after the person ceases to serve as a duly authorized agent.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998;—Am. 1998, Act 416, Imd. Eff. Dec. 21, 1998;—Am. 2000, Act 431, Imd. Eff. Jan. 9, 2001.

MICHIGAN LIQUOR CONTROL CODE OF 1998 (EXCERPT) **Act 58 of 1998**

436.1905 Selling or furnishing alcoholic liquor to minor; enforcement actions prohibited; conditions; exception.

Sec. 905. (1) Notwithstanding section 903, if a retail licensee or a retail licensee's clerk, agent, or employee violates this act by selling or furnishing alcoholic liquor to a minor, or by allowing a minor to consume alcoholic liquor or possess alcoholic liquor for personal consumption on the licensed premises, and if the enforcing agency involved in the prosecution of the violation is the state police or a local police agency, the commission shall not take any action under section 903 to suspend or revoke the licensee's license or assess an administrative fine against the licensee unless all of the following occur, if applicable:

(a) Enforcement action is taken against the minor who purchased, consumed, or received the alcoholic liquor from the retail licensee or the retail licensee's clerk, agent, or employee.

(b) Enforcement action is taken under section 701 against the person 21 years of age or older that is not the retail licensee or the retail licensee's clerk, agent, or employee but who sold or furnished the alcoholic liquor to the minor.

(c) Enforcement action is taken under section 701 against the retail licensee's clerk, agent, or employee.

(2) Subsection (1) does not apply if the enforcing agent involved in the prosecution is a commission inspector rather than a police agency.

(3) Subsection (1)(a) does not apply if the prosecution of the violation is the result of an undercover operation in which the minor who purchased, consumed, or received the alcoholic liquor acted under the direction of the state police or a local police agency as part of the enforcement action and such enforcement action is otherwise in compliance with section 701(4), (5), and (6).

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998;—Am. 2002, Act 725, Imd. Eff. Dec. 30, 2002.

MICHIGAN LIQUOR CONTROL CODE OF 1998 (EXCERPT) **Act 58 of 1998**

436.1906 Retail licensee as responsible vendor; definitions; server training program.

Sec. 906. (1) As used in this section:

(a) "Administrator" means a qualifying company, postsecondary educational institution, or trade association authorized by the commission to offer server training programs and instructor certification classes in compliance with this section and to certify to the commission that those persons meet the requirements of this section.

(b) "Instructor" means an individual certified by an administrator and approved by the commission to teach server training programs. An instructor may be a licensee or an employee of a licensee.

(c) "Prohibited sale" means the sale of alcoholic liquor by an employee of a licensee to a visibly intoxicated person or to a minor, or both.

(d) "Responsible vendor" means a designation by the commission of a retail licensee meeting the standards of this section.

(e) "Server training program" means an educational program whose curriculum has been approved by the commission under the standards described in this section and is offered by an administrator or instructor to a retail licensee for its employees.

(2) The commission shall approve the establishing of a server training program designed for all new on premises licensees or transferees of more than a 50% interest in an on premises license on or after the commencement of the mandatory server training program, and for any existing retail licensees the commission determines to be in need of training due to the frequency or types of violations of this act involving the serving of alcoholic liquor. This subsection does not apply to special licenses except that the commission may require server training for certain special licensees based upon the size and nature of the licensed event. The commission may adopt the existing standards and programmatic framework of private entities and may delegate nondiscretionary administrative functions to outside private entities.

(3) The commission shall establish a program in which the commission designates certain retail licensees, except special licenses, as responsible vendors. The commission may adopt the existing standards and programmatic framework of private entities and may delegate nondiscretionary administrative functions to outside private entities.

(4) The commission shall designate as a responsible vendor a retail licensee who makes available to all full-time and part-time retail employees, within 60 days after being hired, a server training program and who is also free of convictions or administrative determinations involving prohibited sales for not less than 12 months before applying for the designation. The designation continues until suspended by the commission.

(5) A person may apply to the commission for qualification as an administrator for the offering of server training programs and instructor certification classes.

(6) The commission shall approve a curriculum for a server training program presented by a certified instructor in a manner considered by the commission to be adequate that includes, but is not limited to, all of the following topics:

(a) The identification of progressive stages of intoxication and the visible signs associated with each stage.

(b) The identification of the time delay between consumption and visibility of signs of progressive intoxication.

(c) Basic alcohol content among different types of measured drinks containing alcoholic liquor.

(d) Variables associated with visible intoxication, including the rate of drinking, experience, weight, food consumption, sex, and use of other drugs.

(e) Personal skills to handle slow-down of service and intervention procedures.

(f) Procedures for monitoring consumption and maintaining incident reports.

(g) The understanding of acceptable forms of personal identification, techniques for determining the validity of identification, and procedures for dealing with fraudulent identification.

(h) Assessment of the need to ask for identification based on appearance or company policy.

(i) The identification of potential second-party sales and furnishing alcohol to minors by persons 21 years of age or over.

(j) The understanding of possible legal, civil, and administrative consequences of violations of this act, the rules of the commission, and other pertinent state laws.

(k) The understanding of Michigan laws pertaining to minors attempting to purchase, minors in possession, and second-party sales or furnishing of alcohol from adults to minors.

(l) Knowledge of the legal hours of alcohol service and occupancy.

(m) The identification of signs of prohibited activities, such as gambling, solicitation for prostitution, and drug sales.

(n) Any other pertinent laws as determined by the commission.

(7) The commission shall issue an instructor certification to an individual presenting evidence acceptable to the commission of having successfully completed instructor certification classes and shall issue an identification card indicating that certification by the commission.

(8) Upon approval by the commission of a server training program, the commission shall appoint the person sponsoring the server training program as an administrator of that program. The administrator shall provide a certification to the commission that a retail licensee has successfully completed the server training program offered by a certified instructor and approved by the commission and shall recommend that the commission designate the licensee as a responsible vendor.

(9) A certified instructor who is a licensee or an employee of a licensee may offer server training programs approved by the commission to the employees of the licensee and certify to the commission those persons who successfully completed the program.

(10) An on premises licensee whose license was issued or who was the transferee of more than a 50% interest in an on premises license on or after the commencement of the mandatory server training program or an on premises licensee determined by the commission to be in need of training due to the frequency or types of violations of this act involving the serving of alcoholic liquor must have employed or present on the licensed premises, at a minimum, supervisory personnel who have successfully completed a server training program on each shift and during all hours in which alcoholic liquor is served. An on premises licensee must keep a copy of the responsible vendor designation or proof of completion of server training on the licensed premises to facilitate the verification of such designation by the commission, agent of the commission, or law enforcement officer. An on premises licensee determined by the commission to have violated this subsection is subject to revocation, suspension, or other sanction as provided for in section 903. A violation of this subsection is not a violation of section 909.

(11) As a condition of the designation of a licensee as a responsible vendor, the licensee shall make available to the administrator in not less than 60-day time increments records sufficient to verify the names and social security numbers of his or her employees. The administrator shall provide to the commission a list of names and social security numbers of individuals who have successfully completed the server training program and shall monitor the licensee in a manner approved by the commission in order to verify continued compliance of the licensee's status as a responsible vendor. The administrator shall notify the commission in writing as soon as it determines that the licensee has failed to maintain the standards for server training or has failed to cooperate with the administrator's verification procedure. Upon receipt of such a notice from the administrator, the commission shall suspend the licensee's designation as a responsible vendor.

(12) The commission may suspend the designation of a retail licensee as a responsible vendor upon a conviction or administrative determination of a prohibited sale on the licensee's licensed premises. The retail licensee losing such a designation may reapply for designation as a responsible vendor upon the passage of 12 months from the date of the conviction or administrative determination of a prohibited sale if the licensee is not convicted or administratively determined to have engaged in a prohibited sale on the licensed premises. After the first instance of a retail licensee losing its designation as a responsible vendor, that retail licensee is not eligible to reapply for such a designation until an additional 3 months for each subsequent conviction or determination. The 3-month time periods are to be in addition to the 12-month period described in this subsection.

(13) A responsible vendor is not considered to be in violation of the prohibition contained in R 436.1005(4) of the Michigan administrative code regarding allowing an intoxicated person to frequent or loiter on the licensed premises unless the facts demonstrate otherwise.

History: Add. 1998, Act 391, Imd. Eff. Dec. 1, 1998;—Am. 2000, Act 431, Imd. Eff. Jan. 9, 2001.

MICHIGAN LIQUOR CONTROL CODE OF 1998 (EXCERPT)

Act 58 of 1998

436.1907 Revocation of license; forfeiture of privileges; seizure of alcoholic liquor.

Sec. 907. (1) Upon revocation of a license issued under this act, any and all privileges conferred by that license shall be forfeited and the commission shall seize any and all alcoholic liquor found in the possession of the licensee.

(2) The commission shall remit to that licensee the purchase price less 10%, paid by the licensee to the commission for all alcoholic liquor seized. All other alcoholic liquor seized shall be disposed of by order of the commission and no payment shall be made for that alcoholic liquor.

(3) A person whose license has been revoked for cause or whose license has been ordered transferred to another person for cause is not eligible for issuance or reissuance of a license under this act for a period of at least 2 years.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

MICHIGAN LIQUOR CONTROL CODE OF 1998 (EXCERPT)

Act 58 of 1998

436.1909 Violation of act as misdemeanor; penalties; legislative intent.

Sec. 909. (1) Except as otherwise provided in this act, a person, other than a person required to be licensed under this act, who violates this act is guilty of a misdemeanor.

(2) Except as otherwise provided in this act, a licensee who violates this act, or a rule or regulation promulgated under this act, is guilty of a misdemeanor punishable by imprisonment for not more than 6

months or a fine of not more than \$500.00, or both.

(3) A person who performs any act for which a license is required under this act without first obtaining that license or who sells alcoholic liquor in a county that has prohibited the sale of alcoholic liquor under section 1107 is guilty of a felony punishable by imprisonment for not more than 1 year or by a fine of not more than \$1,000.00, or both.

(4) It is the intent of the legislature that the court, in imposing punishment under this section, should discriminate between casual or slight violations and habitual sales of alcoholic liquor or attempts to commercialize violations of this act or the rules or regulations promulgated under this act.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.